

REMARKS/ARGUMENTS

Claims 1-5,10,13-14,17 and 19-26 remain in this application.

Claims 6-9,11-12,15-16 and 18 have been cancelled.

The examiner has acknowledged that claims 1-5,10,13-14,17 and 19-26 are directed to allowable subject matter.

In view of the examiner's earlier restriction requirement, applicant retains the right to present claims 6-9,11-12,15-16 and 18 in a divisional application.

In response to the Office Action of **October 8, 2008**, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Obviousness-Type Double Patenting

The claim stands provisionally rejected under the judicially created doctrine of obviousness-type double patenting of the claim of the co-pending Application No. 11/843,184. The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because they claim very similar structures. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with the instant application (See CFR 1.130(b)).

The instant application 10/618,689 and the co-pending application 11/843,184 are commonly owned by Ortho Innovations, LLC. A terminal disclaimer in compliance with 37 CFR 1.321 is filed herewith.

Applicants respectfully submit that the filing of the terminal disclaimer overcomes the provisional rejection based on non-statutory double patenting grounds made in the Office Action mailed on October 8, 2008 and respectfully request that this rejection now be withdrawn.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested. Should there be any remaining issues which can be resolved via an Examiner's Amendment; the Examiner is urged to call the undersigned in order to expedite the prosecution of this application.

The Commissioner for Patents is hereby authorized to charge any deficiency in any fees due with the filing of this paper or credit any overpayments in any fees paid on the filing to Deposit Account No. 13-0439.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Keith Campbell", is written over a horizontal line.

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